



**Memphis City Council
Summary Sheet
MC Stiles Belt Filter Press Replacement**

1. This project is to replace 4 worn out belt filter presses at MC Stiles WWTP.
2. This item is being submitted by Public Works (Environmental Engineering)
3. This item does not change an existing ordinance or resolution.
4. This item does require a new contract.
5. This item requires an expenditure of funds.

RESOLUTION

WHEREAS, the Council of the City of Memphis approved Covered Anaerobic Lagoon, project number SW02011 as part of the Public Works Fiscal Year 2012 Capital Improvement Budget; and

WHEREAS, bids were taken on January 27, 2012 to replace belt filter presses at Stiles Waste Water Treatment Plant with the lowest complying bid of five bids being \$2,087,740.00 submitted by Chris-Hill Construction Company, LLC; and

WHEREAS, it is necessary transfer an allocation of \$2,296,514.00 funded by Sewer Revenue Bonds from Covered Anaerobic Lagoon, project number SW02011 to Stiles Plant Modification, project number SW04009 to replace belt filter presses at Stiles Waste Water Treatment Plant; and

WHEREAS, it is necessary to appropriate \$2,296,514.00 funded by Sewer Revenue Bonds in Stiles Plant Modification as follows:

Contract Amount	\$ 2,087,740.00
Project Contingencies	\$ 208,774.00
Total	\$ 2,296,514.00

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2012 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$2,296,514.00 funded by Sewer Revenue Bonds from Covered Anaerobic Lagoon, project number SW02011 to Stiles Plant Modification, project number SW04009 to replace belt filter presses at Stiles Waste Water Treatment Plant.

NOW, THEREFORE BE IT RESOLVED, By the Council of the City of Memphis that there be and is hereby appropriated the sum of \$2,296,514.00 funded by Sewer Revenue Bonds chargeable to the Fiscal Year 2012 Capital Improvement Budget and credited as follows:

Project Title:	Stiles Plant Modification
Project Number	SW04009
Amount:	\$2,296,514.00



Memphis City Council Summary Sheet Instructions

Resolution for the Poplar Box Culvert over Sophia Bayou at Pauline Street
ST03138:

1. Project is to repair the existing scour problems on the box culvert which is in poor condition.
2. This project is initiated by the Public Works Division in response to the recommendation of the City Engineer.
3. This project is currently in the CIP budget taken from the bridge storm water fund and is designated as project ST03138.
4. This project requires a construction contract with Ensco, LLC to repair the existing box culvert. The box culvert will be repaired keeping at least two lanes of east bound Poplar open at all times.
5. This project requires an expenditure of storm water funds as shown in the current CIP 2012 fiscal year budget.

RESOLUTION

WHEREAS, the Council of the City of Memphis approved Bridge Repair Storm Water, project number ST03083, as part of the Public Works Fiscal Year 2012 Capital Improvement Budget; and

WHEREAS, bids were taken on January 13, 2012 to repair existing scour problems on the Poplar Box Culvert over Sophia Bayou at Pauline Street with the lowest complying bid of three bids being \$107,000.00 submitted by Enscor, LLC; and

WHEREAS, it is necessary to amend the Fiscal Year 2012 Capital Improvement Budget by transferring an allocation of \$115,560.00 funded by G.O. Bonds – General (Storm Water) from Bridge Repair Storm Water, project number ST03083, to Poplar Bridge West Pauline, project number ST03138 to repair existing scour problems on the Poplar Box Culvert over Sophia Bayou at Pauline Street; and

WHEREAS, it is necessary to appropriate \$115,560.00 funded by G.O. Bonds – General (Storm Water) in Poplar Bridge West Pauline, project number ST03138 as follows:

Contract Amount	\$ 107,000.00
Project Contingencies	\$ <u>8,560.00</u>
Total	\$ 115,560.00

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2012 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$115,560.00 funded by G.O. Bonds – General (Storm Water) from Bridge Repair Storm Water, project number ST03083, to Poplar Bridge West Pauline, project number ST03138 to repair existing scour problems on the Poplar Box Culvert over Sophia Bayou at Pauline Street.

BE IT FURTHER RESOLVED, that there be and is hereby appropriated the sum of \$115,560.00 funded by G.O. Bonds - General (Storm Water) chargeable to the Fiscal Year 2012 Capital Improvement Budget and credited as follows:

Project Title	Poplar Bridge West Pauline
Project Number	ST03138
Amount	\$115,560.00



**Memphis City Council
Summary Sheet
CIPP 36-48 Rehabilitation**

1. This project is to repair and rehab existing damaged sanitary sewer pipes using cured in place technology at 2 locations (Mt.Moriah/Fox Plaza and I-40/Wolf River).
2. This item is being submitted by Public Works (Environmental Engineering)
3. This item does not change an existing ordinance or resolution.
4. This item does require a new contract.
5. This item requires an expenditure of funds.

RESOLUTION

WHEREAS, the Council of the City of Memphis approved Rehab Existing Sewers, project number SW02001 as part of the Public Works Fiscal Year 2012 Capital Improvement Budget; and

WHEREAS, bids were taken on January 20, 2012 to repair and rehab existing damaged sanitation sewer pipe with the lowest complying bid of five bids being \$1,922,750.00 submitted by SAK Construction, LLC; and

WHEREAS, it is necessary to transfer an allocation of \$2,115,025.00 funded by Sewer Revenue Bonds from Rehab Existing Sewers, project number SW02001 to CIPP 36-48 Rehab Project, project number SW02097 to repair and rehab existing damaged sanitation sewer pipe; and

WHEREAS, it is necessary to appropriate \$2,115,025.00 funded by Sewer Revenue bonds in CIPP 36-48 Rehab Project, project number SW02097 as follows:

Contract Amount	\$1,922,750.00
Project Contingencies	<u>192,275.00</u>
Total	\$2,115,025.00

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Memphis that the Fiscal Year 2012 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$2,115,025.00 funded by Sewer Revenue Bonds from Rehab Existing Sewers, project number SW02001 to CIPP 36-48 Rehab Project, project number SW02097 to repair and rehab existing damaged sanitation sewer pipe.

BE IT FURTHER RESOLVED, that there be and is hereby appropriated the sum of \$2,115,025.00 funded by Sewer Revenue Bonds chargeable to the Fiscal Year 2012 Capital Improvement Budget and credited as follows:

Project Title:	CIPP 36-48 Rehab Project
Project Number	SW02097
Amount:	\$2,115,025.00



Memphis City Council Summary Sheet

Raleigh Drainage District 4605/4615 Edgemont Ave, Drainage Improvement
ST03124.

Resolution appropriating Construction Fund for Raleigh District 4605/4615
Edgemont Ave. Drainage Improvement
STO3124.

- This project provides drainage improvements in a drainage-way by installing approximately 300ft. of 15" Reinforced Concrete Pipe and related inlets to reduce neighborhood flooding.
- This project was initiated by the Public Works Division and is being administered by the Engineering Division.
- This project involves a new construction contract.
- No new ordinance is required.
- The project funds originate from the city of Memphis Storm water Enterprise funds. This resolution transfers a portion of the funds indentified in the FY 2012 CIP Storm water Budget in order to execute the construction contract.

RESOLUTION

WHEREAS, the Council of the City of Memphis approved Drainage-ST , project number ST03006, as part of the Public Works Fiscal Year 2012 Capital Improvement Budget; and

WHEREAS, bids were taken on January 13, 2012 for drainage improvements at 4605/4615 Edgemont Avenue in the Raleigh Drainage District with the lowest complying bid of five bids being \$32,236.85 submitted by Ensco, Inc; and

WHEREAS, it is necessary to transfer an allocation of \$34,816.00 funded by G.O. Bonds – General (Storm Water) from Drainage-ST, project number ST03006, to 4605/4615 Edgemont Avenue, project number ST03124, for drainage improvements; and

WHEREAS, it is necessary to appropriate \$34,816.00 funded by G.O. Bonds – General (Storm Water) in 4605/4615 Edgemont, project number ST03124 as follows:

Contract Amount	\$32,237.00
Project Contingencies	<u>2,579.00</u>
	\$34,816.00

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2012 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$34,816.00 funded by G.O. Bonds – General (Storm Water) from Drainage-ST, project number ST03006, to 4605/4615 Edgemont Avenue, project number ST03124, for drainage improvements.

BE IT FURTHER RESOLVED, that there be and is hereby appropriated the sum of \$34,816.00 funded by G.O. Bonds – General (Storm Water) chargeable to the FY 2012 Capital Improvement Budget and credited as follows:

Project Title	4605/4615 Edgemont Avenue
Project Number	ST03124
Amount	\$34,816.00



Memphis City Council Summary Sheet

Resolution accepting additional Federal grant funds for the Elvis Presley Project.

- This item is a resolution accepting FY2012 STP Enhancement Federal grant funds and allocating these funds for construction on this project.
- The Elvis Presley Blvd. project (PW01064) from Shelby Drive to Brooks Road is in the City Council adopted FY2012-16 CIP and the Divisions of Public Works and Engineering are recommending the acceptance of additional grant funds and moving forward with construction in FY2012.
- This resolution adds FY2012 STP Enhancement grant construction funds to the already accepted grant funds in October 2010 for the Elvis Presley project.
- The Tennessee Department of Transportation has submitted a contract amendment for City of Memphis approval of the FY2012 STP Enhancement additional grant funds.
- The matching funds will be provided from G.O. Bond funds allocated for this project.

RESOLUTION

WHEREAS, the Council of the City of Memphis approved Elvis Presley/Shelby/Winchester, project number PW01064 as part of the Fiscal Year 2012 Capital Improvement Program; and

WHEREAS, on October 12, 2010 the City of Memphis entered into a contract with the State of Tennessee Department of Transportation, in which the State agreed to fund 80% of the project cost with a local match of 20%; and

WHEREAS, the State has submitted a contract amendment for additional construction funds in the amount of \$257,344.60, of which 20% local match is required; and

WHEREAS, it is necessary to accept Federal Grant funds in the amount of \$205,875.68 funded by the Surface Transportation Program; and

WHEREAS, it is necessary to amend the Fiscal Year 2012 Capital Improvement Budget by increasing a construction allocation in the amount of \$205,876.00 funded by Federal Grant funds for Elvis Presley/Shelby/Winchester, project number PW01064.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that Federal Grant funds in the amount of \$205,875.68, is accepted from the State of Tennessee Department of Transportation funded by the Surface Transportation program.

BE IT FURTHER RESOLVED, that the Fiscal Year 2012 Capital Improvement Budget be and is hereby amended by increasing a construction allocation in the amount \$205,876.00 funded by Federal Grant Funds for Elvis Presley/Shelby/Winchester, project number PW01064.



Memphis City Council Summary Sheet

Resolution for the emergency repair of the Sophia Bayou Box Culvert
Repair/Replacement ST03145:

1. Emergency Project to repair/replace the Sophia Bayou Box Culvert.
2. This project is initiated by the Public Works Division in response to the recommendation of the City Engineer.
3. This project is an emergency repair taken from storm water funds and is Project No. ST03145, which has been approved by the CAO (see attached memo).
4. This project requires a construction contract with Encor, LLC to repair/replace the Sophia Bayou Box Culvert.
5. This project requires an expenditure of Storm Water funds as shown in the current storm water 2012 fiscal year budget.

RESOLUTION

WHEREAS, the Council of the City of Memphis approved Drainage-ST, project number ST03006, as part of the Public Works Fiscal Year 2012 Capital Improvement Budget; and

WHEREAS, bids were taken on January 27, 2012 for the emergency repair/replacement of the Sophia Bayou Box Culvert with the lowest complying bid of four bids being \$177,729.00 submitted by Ensco, LLC; and

WHEREAS, it is necessary to amend the Fiscal Year 2012 Capital Improvement Budget by transferring an allocation of \$191,947.00 funded by G.O. Bonds – General (Storm Water) from Drainage-ST, project number ST03006, to Sophia Bayou Box Culvert, project number ST03145 for the emergency repair/replacement of the Sophia Bayou Box Culvert; and

WHEREAS, it is necessary to appropriate \$191,947.00 funded by G.O. Bonds – General (Storm Water) in Sophia Bayou Box Culvert, project number ST03145 as follows:

Contract Amount	\$ 177,729.00
Project Contingencies	\$ 14,218.00
Total	\$ 191,947.00

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2012 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$191,947.00 funded by G.O. Bonds – General (Storm Water) from Drainage-ST, project number ST03006, to Sophia Bayou Box Culvert, project number ST03145 for the emergency repair/replacement of the Sophia Bayou Box Culvert.

BE IT FURTHER RESOLVED, that there be and is hereby appropriated the sum of \$191,947.00 funded by G.O. Bonds - General (Storm Water) chargeable to the Fiscal Year 2012 Capital Improvement Budget and credited as follows:

Project Title	Sophia Bayou Box Culvert
Project Number	ST03145
Amount	\$191,947.00

RESOLUTION

WHEREAS, the City of Memphis has initiated annexation proceedings to annex the Grays Creek Annexation area in response to legislation introduced in the General Assembly seeking to eliminate the area from the City's approved urban growth area;

WHEREAS, the Mayor and the Council have expressed their desire to grow the City's boundaries in an orderly manner;

WHEREAS, the City has a long history of annexation by negotiation and agreement and would prefer to reach annexation agreements that are amenable to the City's objectives and the objectives of residents in the proposed annexation areas;

WHEREAS, the City resolved by agreement the Stonebridge-Hillshire annexation, the Southwind annexation and has by agreement extended the annexation dates for the Bridgewater area;

WHEREAS, the City Council desires to authorize the Mayor to engage in negotiations with the Grays Creek residents with the objective of reaching agreements to defer the annexation of the area for an extended period of time in consideration of agreements from a majority of the property owners not to seek incorporation or to contest the City's annexation after the agreed deferral period.

NOW THEREFORE BE IT RESOLVED that the Mayor is authorized and encouraged to engage in negotiations with the Grays Creek residents with the objective of reaching agreements to defer the annexation of the area for an extended period of time in consideration of agreements from a majority of the property owners not to seek incorporation or to contest the City's annexation after the agreed deferral period similar to the agreements reached with property owners in the Bridgewater Annexation area.

PETITION AND CONSENT FOR ANNEXATION

1. The undersigned owner(s) of property located within an unincorporated area of Shelby County, Tennessee known as the Grays Creek territory, more particularly described on Exhibit "A" attached hereto and made a part hereof by reference as if set out herein verbatim ("Subject Property") do hereby petition and request the City of Memphis, Tennessee to extend its boundaries by annexation of the Subject Property either by ordinance under § 6-51-102 of Tennessee Code Annotated or under § 6-51-105 of Tennessee Code Annotated, as follows:

a. any annexation by ordinance shall become operative and final for purposes of any *quo warranto* contest thirty (30) days after final passage of said ordinance as specified in § 6-51-102(a)(1) of Tennessee Code Annotated but any such ordinance shall expressly specify an effective date of December 30, 20____, if there is no *quo warranto* challenge to the ordinance or thirty-one (31) days after an order sustaining the validity of the ordinance which ever occurs first.

b. Any resolution or ordinance proposing annexation by referendum shall provide for an effective date no sooner than December 30, 20____.

2. To induce the City to annex the Subject Property as provided in this Petition and Consent, and in consideration therefor the undersigned irrevocably agrees:

(1) That the undersigned will not file any suit in the nature of *quo warranto* pursuant to § 6-51-103 of Tennessee Code Annotated or file any other suit challenging in any manner, contesting or opposing the annexation requested in this Petition.

(2) That the undersigned will not participate, either directly or indirectly, in any lawsuit challenging the annexation requested in this Petition.

(3) That the undersigned as an owner of property which is or may be the subject of an annexation ordinance hereby quit claims, releases, conveys and assigns to the City of Memphis any and all right, title and interest, to any cause of action to contest said annexation by *quo warranto* pursuant to § 6-51-103 of Tennessee Code Annotated or otherwise, and that this Petition and Consent may be filed in any such action as a complete and absolute bar to the undersigned maintaining such an action or to the undersigned being granted any relief vacating any such ordinance or declaring the ordinance unreasonable.

(4) By executing this Petition and Consent, the undersigned agrees, represents and warrants that the undersigned will not be an aggrieved owner of property if the City annexes the Subject Property in the manner requested in this Petition and Consent.

(5) That the undersigned will not participate, either directly or indirectly, in any effort to incorporate all or any part of the territory which is the subject of the annexation requested in this Petition

3. This document is intended to RUN WITH THE LAND described in Exhibit "A" attached hereto and made a part hereof by reference as if set out verbatim for the benefit of the City of Memphis and shall expressly bind and burden the undersigned and the undersigned's successors, heirs, assigns and personal representatives.

4. To provide notice to any subsequent owners of the Subject Property of this perpetual and irrevocable covenant, petition and agreement running with the land described on Exhibit "A", this Petition and Consent may be recorded in the Register's Office of Shelby County, Tennessee.

ANY PURCHASERS, MORTGAGEE, ASSIGNEE OR OTHER PERSON ACQUIRING AN INTEREST IN THE LAND DESCRIBED ON EXHIBIT "A" SUBSEQUENT TO THE DATE HEREOF ARE BY THESE PRESENTS NOTIFIED THAT THE SUBJECT PROPERTY IS ENCUMBERED BY AN IRREVOCABLE AND PERPETUAL COVENANT RUNNING WITH THE LAND THAT IS PARAMOUNT AND PRIOR TO ANY INTEREST ACQUIRED AFTER RECORDATION OF THIS INTEREST, AND THAT BY ANY INTEREST IN THE PROPERTY ARISING AFTER RECORDATION OF THIS DOCUMENT WILL BE BOUND BY ITS TERMS AS THOUGH THE OWNER THEREOF WAS AN ORIGINAL SIGNATORY HERETO.

5. If this instrument is also executed by any mortgagee or by any other party having an interest in the Subject Property, said parties also consent to this Petition and Consent insofar as their respective interests are or may be affected hereby.

IN WITNESS WHEREOF this Petition and Consent has been executed on this the _____ day of _____, 20____.

[Printed Name of Owner]

By: _____

Title: _____

[Printed Name of Mortgagee]

By: _____

Title: _____

Printed Name of Other Interested Party

By: _____

Title: _____

Printed Name of Other Interested Party

By: _____

Title: _____

Printed Name of Other Interested Party

By: _____

Title: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said State and County, _____, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal at office, on this ____ day of _____, 2003.

Notary Public

My Commission Expires:

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself (or herself) to be the _____ of _____, the within named bargainor, a corporation, and that he as such _____, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by self as such _____.

WITNESS my hand and seal at office, on this the ____ day of _____, 2003.

Notary Public

My Commission Expires:

[NOTE copy acknowledgements, if necessary, for additional signatures.]

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said County and State, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged ___self to be a partner of _____, the within named bargainor, a partnership, and that _he as such partner executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by ___self as such partner.

WITNESS my hand and seal at office, on this ____ day of _____, 2003.

Notary Public

My Commission Expires:

[NOTE copy acknowledgements, if necessary, for additional signatures.]

RESOLUTION

WHEREAS, the City of Memphis has initiated annexation proceedings to annex the Grays Creek Annexation area in response to legislation introduced in the General Assembly seeking to eliminate the area from the City's approved urban growth area;

WHEREAS, the Mayor and the Council have expressed their desire to grow the City's boundaries in an orderly manner;

WHEREAS, the City has a long history of annexation by negotiation and agreement and would prefer to reach annexation agreements that are amenable to the City's objectives and the objectives of residents in the proposed annexation areas;

WHEREAS, the City resolved by agreement the Stonebridge-Hillshire annexation, the Southwind annexation and has by agreement extended the annexation dates for the Bridgewater area;

WHEREAS, the City Council desires to authorize the Mayor to engage in negotiations with the Grays Creek residents with the objective of reaching agreements to defer the annexation of the area for an extended period of time in consideration of agreements from a majority of the property owners not to seek incorporation or to contest the City's annexation after the agreed deferral period.

NOW THEREFORE BE IT RESOLVED that the Mayor is authorized and encouraged to engage in negotiations with the Grays Creek residents with the objective of reaching agreements to defer the annexation of the area for an extended period of time in consideration of agreements from a majority of the property owners not to seek incorporation or to contest the City's annexation after the agreed deferral period similar to the agreements reached with property owners in the Bridgewater Annexation area.



Memphis City Council Summary Sheet

Resolution for Beale Street Landing, project number GA01002:

- This item is a Resolution seeking Council acceptance of Federal Grant Funds in the amount of \$475,000.00, and Council approval to amend the Fiscal Year 2012 CIP Budget to allocate those funds, and to appropriate those funds in Contract Construction in Beale Street Landing, project number GA01002.
- The initiating party is the Division of Park Services.
- This Resolution does not change any existing Ordinance nor Resolution.
- This Resolution will require an amendment to City of Memphis contract #24402 to reflect the addition of \$475,000.00 in Federal Grant Funds to the contract.
- This Resolution will require an amendment to the Fiscal Year 2012 CIP Budget to allocate \$475,000.00 in Federal Grant Funds in Contract Construction in Beale Street Landing, project number GA01002.

RESOLUTION

WHEREAS, the Council of the City of Memphis did include Beale Street Landing, project number GA01002, as part of the Fiscal Year 2012 Capital Improvement Budget; and

WHEREAS, the Tennessee Department of Transportation has advised the City of Memphis that Federal Grant Funds in the amount of \$475,000.00 for construction of the Beale Street Landing Docking Facility are now available for local use; and

WHEREAS, it is necessary for the City of Memphis to accept these Federal Grant Funds and to amend the Fiscal Year 2012 Capital Improvement Budget by allocating Federal Grant Funds in the amount of \$475,000.00 in Contract Construction in Beale Street Landing, project number GA01002; and

WHEREAS, it is necessary to appropriate \$475,000.00 funded by Federal Grant Funds in Contract Construction in Beale Street Landing, project number GA01002.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Memphis that the Federal Grant Funds in the amount of \$475,000.00 be accepted by the City of Memphis.

BE IT FURTHER RESOLVED, that the Fiscal Year 2012 Capital Improvement Budget be amended by allocating Federal Grant Funds in the amount of \$475,000.00 in Contract Construction in Beale Street Landing, project number GA01002.

BE IT FURTHER RESOLVED, that there be and is hereby appropriated \$475,000.00 funded by Federal Grant Funds chargeable to the Fiscal Year 2012 Capital Improvement Budget and credited as follows:

Project Title:	Beale Street Landing
Project Number:	GA01002
Amount:	\$475,000.00

Amendment Number: 1

Agreement Number: 080015

Project Identification Number: 102617.00

**Federal Project Number: FBD/DEMO-FY03(9)
HPP/STP-EN-9409(111)**

**State Project Number: 79960-1630-94
79LPLM-F3-035
79LPLM-F3-046**

**FOR IMPLEMENTATION OF SURFACE TRANSPORTATION
PROGRAM ACTIVITY**

THIS AGREEMENT AMENDMENT is made and entered into this _____ day of _____, 20__ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MEMPHIS (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Beale Street Landing/Docking Facility: Proposed docking facility for riverboats with provisions for embarking and disembarking passengers, to be located at the south end of the cobblestones on the Mississippi River near Beale Street.

The language of AGREEMENT # 080015 dated July 14, 2008 is hereby deleted in its entirety and replaced with the following:

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.
- b) In the event this Agreement includes a Safe Routes to School Grant for non-infrastructure activities, a Detailed Grant Budget as further described in Attachment 1 attached hereto and by this reference made a part hereof (hereinafter called the "Project") shall provide line-item amounts as applicable only to expenses incurred during the period between the effectual date of this Agreement

and the completion date shown in Section B.2(c) hereof. Expenditures, reimbursements, and payments under this Grant Agreement shall adhere to the Grant Budget. The Agency may vary from a Grant Budget line-item amount by up to fifteen percent (15%) of the line-item amount, provided that any increase is offset by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Agreement amount detailed in the Grant Budget and provided that written approval of any such variance is received prior to the expenditure. The percentage of expenditure for non-infrastructure work versus infrastructure work also cannot be changed. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Agreement.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by: Agency or Project
Preliminary Engineering by:	Agency	Agency
Environmental Clearance by:	Agency	Agency
Right-of-Way by:	Agency	Agency
Utility Coordination by:	Agency	Agency
Construction by:	Agency	Agency/Project

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) If this Agreement is funded with any Enhancement funds, then the Agency shall provide the Department with the documents, certifications and clearances

Locally Managed Enhancement Agreement

necessary to obtain the Department's Notice to Proceed with the Construction Phase by N/A. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by the aforesaid date, then the Department may terminate this Agreement in accordance with Section D.23.

- d) A full time employee of the Agency shall supervise the herein described and assigned phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) The Agency shall complete the herein assigned phases of the Project on or before **July 31, 2013**. The Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date. An extension of the aforesaid completion date of this Agreement may only be effected by a written amendment to the Agreement, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement. Otherwise, without an extension of the aforesaid completion date of this Agreement, the Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of

the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal

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does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.

- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its contractor or agent during the Construction phase of the Project.
- e) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Agency shall transfer the land acquired to, or grant a conservation easement for the benefit of, a state agency or other governmental agency in perpetuity in accordance with the Agency's application.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for

the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

B.10 Safe Routes to School Requirements

- a) If the herein described project is funded with Safe Routes to School (SRTS) funds, Section B.10 shall apply.
- b) The Agency shall provide pre and post Parent Surveys and Student Tally Sheets for each school under this Agreement:
 - 1) The Pre Parent Surveys and Student Tally Sheets are to be completed and returned with this Agreement.

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- 2) The Post Parent Surveys and Student Tally Sheets are to be sent no later than six (6) months from the completion of the infrastructure as defined herein with the final reimbursement request.
 - 3) The final reimbursement shall not be paid until the Post Parent Surveys and Student Tally Sheets are received by the Department.
 - 4) These surveys and tallies are to be completed on those specific forms sent to the Agency with the detailed instruction letter. (Required forms and instructions are available at: www.saferoutesindo.org/resources)
- c) The Agency shall obtain prior approval from the Department before purchasing any equipment and/or products under this Agreement. If prior approval is received, procurement shall be made on a competitive basis, in accordance with applicable state and local laws and regulations provided that the procurement conforms to applicable federal law and the standards identified in 49CFR18.36.
- d) The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Local Programs Development Manager, for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Agency's compliance with applicable federal procurement requirements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A..

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.
- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.
- d) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Department will reimburse the Agency for only 90% of the federal share of eligible costs until such time as the Agency transfers the land, or a conservation easement therein, to a state agency or another governmental agency as provided in Section B.5 (e).

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

- 1) **Misrepresentation:**

- The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

- 2) **Litigation:**

- There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

- 3) **Approval by Department:**

- The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related

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expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) Conflict of Interests:

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) Default:

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then The Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.
- c) In the event the Project is located on State Highway Right-of-Way, the Agency shall have the sole responsibility - at its own expense - of maintaining and keeping the project in good repair and in a safe and clean condition, including picking up litter that may accrue at the site.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.
- b) **DBE Obligation:**
The Agency and its contractors agree to ensure that Disadvantaged Business

Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

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- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such contractors to

insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provision:
 - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the Project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) The Agency shall permit, and shall require its contractor, subcontractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the

Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- b) In the event that the Project herein described includes the state highway system, the Department may rescind its authorization for the location of the Project upon state highway right-of-way at any time by giving the Agency at least ninety (90) days advance written notice thereof, and the Agency shall be obligated to close the Project to public use and remove it at the Agency's expense and restore the premises to the satisfaction of the Department by or before the effective date of such termination.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and

restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Costs:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.
- b) In the event the Agency is a private, non-profit organization, the liability of the Agency shall not be subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
- 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

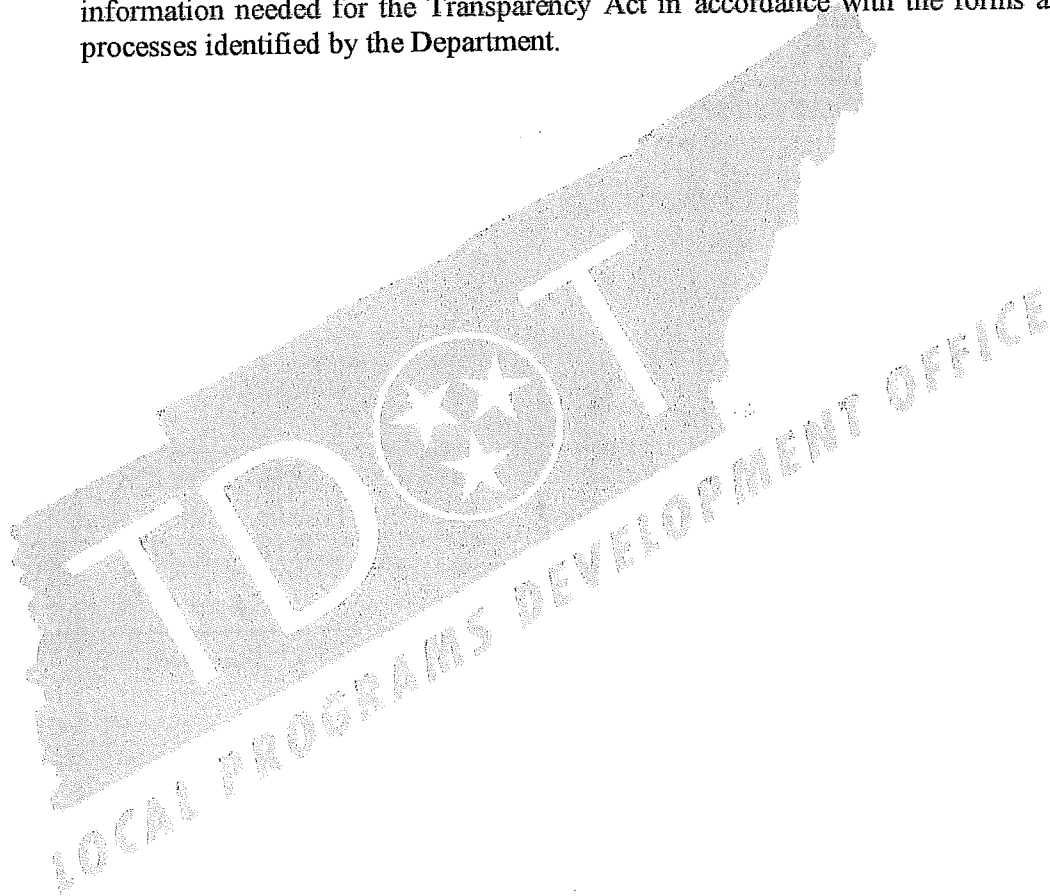
Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.
- c) In the event this Agreement is funded with Roadscapes funds, the facility on which this Project is being developed shall remain open to the public for not less than ten (10) years.
- d) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Agency shall transfer the land acquired, or grant a conservation easement therein, to a state agency or other governmental agency in perpetuity in accordance with the Agency's application.

D.37 Federal Funding Accountability and Transparency Act:

a) **If the Project is funded with federal funds the following shall apply:**

- 1) The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170 and 2 CFR Part 25. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.



Amendment Deleting Entire Previous Contract including Exhibit

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

City of Memphis

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

By: _____ By: _____
Mayor John C. Schroer
Commissioner

APPROVED AS TO
FORM AND LEGALITY

APPROVED AS TO
FORM AND LEGALITY

By: _____ By: _____
City Attorney John Reinbold
General Counsel

Approved:

Version 1

EXHIBIT "A" for AMENDMENT I**CONTRACT NO.: 080015****PROJECT IDENTIFICATION No.: 102617.00**

PROJECT DESCRIPTION: Beale Street Landing/Docking Facility: Proposed Docking Facility for Riverboats with Provisions for Embarking and Disembarking Passengers, to Be Located at the South End of the Cobblestones on the Mississippi River near Beale Street. The purpose of the project is not location dependent. The purpose of the project shall be accomplished in accordance with the project application, budget, and/or scope of work on which approval of the project was based, AASHTO standards and Exhibit B (which are the AASHTO path standards). The application, budget, and/or scope of work may be amended from time to time and when amended will serve as the revised project standard.

TYPE OF WORK: FACILITIES FOR PEDESTRIANS AND BICYCLES**FUNDING:**

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE - FBD 03	FERRY BOAT DISCRETIONARY (FBD)	80%	0%	20%	\$22,776.25
CONST - FBD 05	FERRY BOAT DISCRETIONARY (FBD)	80%	0%	20%	\$1,604,618.75
CONST - FBD 06	FERRY BOAT DISCRETIONARY (FBD)	80%	0%	20%	\$2,461,741.25
CONST - FBD 03	FERRY BOAT DISCRETIONARY (FBD)	80%	0%	20%	\$598,161.00
CONST - FBD 09	FERRY BOAT DISCRETIONARY (FBD)	80%	0%	20%	\$593,750.00
CONST - TN061	FEDERAL EARMARK	100%	0%	0%	\$762,267.00
CONST - TN044	HIGH PRIORITY PROJECT (HPP)	80%	0%	20%	\$3,459,506.25
CONST	ENHANCEMENT (ENH)	80%	0%	20%	\$648,800.00
CONST-OS - TN061	FEDERAL EARMARK	100%	0%	0%	\$237,733.00

LIABILITY: The Agency understands the estimated cost of the enhancement funds for the construction phase of the Project is \$648,800.00, and that the Department will pay the Agency, as herein provided, for 80% of the actual cost of the construction phase with the maximum liability of the Department being \$519,040.00. If the Agency provides its required 20% match by soft match, the reimbursement percentage can increase up to 100%. However, the maximum federal dollar amount does not change. Any additional costs for the construction phase shall be totally paid by the Agency.

The twenty percent (20%) non-federal share of the Project can be provided by the Agency as a cash match. The Agency also has the option of providing these funds through the use of the value of preliminary engineering services, donated land, services, material or equipment. To be eligible under this paragraph, the items or work performed must be done in accordance with State and Federal law.

It is hereby understood and agreed that the selection of the method of payment of the non-federal share must be made at the time the certification of the availability of right-of-way is made to the Department and cannot be changed once established. The value of the engineering services must be established by either a certification signed by the highest elected Official of the Agency or by a copy of a legal and binding contract between the Agency and a qualified engineering firm. The said contract must have been executed by all parties. The value of land donations is determined by appraisals. The value of donated services, material, or equipment will be determined on a case by case basis.

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure of the Federal Funds allocated or allocable to the Agency or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: Ferry Boat Discretionary (FBD) funds, Transportation Equity Act for the 21st Century (TEA-21), STP: 23 U.S.C.A, Section 133, Surface Transportation Program funds allocated or subject to allocation to the agency and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU provides funding for the development of the herein-described project as denoted below, which is comprised of 80% federal funds. These funds do not indicate reductions made by the Federal Highway Administration and out of the Department's control. It is hereby understood and agreed between the parties that the funding provided hereunder will be available in increments as described below. The Agency understands and agrees that Federal Funds cannot be expended until they are received.

Fiscal Year	Total Federal Funding	Fiscal Year	Total Federal Funding
TEA-21:	\$3,024,043.00	FY 05 Appropriation:	\$1,000,000.00

NOTE: Where the local government is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

EXHIBIT "B"**BICYCLE PATH STANDARD**

Bicycle paths shall be constructed on a compacted subgrade using a four (4) inch course of mineral aggregate, Type "A" Base, Grading "D" and a two (2) inch course of Bituminous Plant Mix Base (Hot Mix) Grading "E". The minimum width of bicycle paths shall not be less than six (6) feet for a one-way path. It should be recognized, however, that one-way paths will often be used as two-way facilities unless effective measures are taken to assure one-way operation. The required width for a two-way, shared use path is ten (10) feet.

WALKING PATH STANDARD

Walking paths shall be constructed on a compacted subgrade using four (4) inches of mineral aggregate, Type "A" Base, Grading "D" and four (4) inches of Portland cement concrete, Class "A". The minimum width of walking paths shall be not less than five (5) feet. It should be noted that a five (5) foot path will require signing prohibiting bicycles.

The Local Agency may choose to use either of the above standards for the composition of the trail whenever the use of the path will include both cycling and walking, provided the minimum widths contained in each of the standards shall remain unchanged.